



### Findings of Fact

1. Claimant worked for respondent from February 7, 1994, through April 17, 1994. His work involved lifting a stack of lead plates onto a saw and then cutting them in half. The saw activated when a venting hood was pulled down over the saw. Claimant wore gloves, mask, and respirator. Claimant was required to vacuum off the lead dust and wash his hands each time he left the work area.
2. During the first night of work for respondent, claimant started choking because his throat swelled. He went to the emergency room, was given a shot of Benadryl, which he testified took care of it, and was taken off work for several days. Claimant was told he was allergic to the soap used in the masks. Claimant testified he had similar problems before when he ate something he was allergic to.
3. Claimant could not be specific about the dates, but sometime during his employment for respondent he began experiencing numbness or tingling in his left hand. The condition became worse and also went into his toes and ankles.
4. On approximately his last day of work for respondent, claimant went to Dr. Luecha Rutngamlug. At that time, the numbness was only in the left hand. It progressed to the other hand and to the feet after claimant left work for respondent.
5. Dr. Rutngamlug referred claimant to Dr. Viswanatha Kharidi who in turn referred claimant to Dr. Steven J. Gulevich in Denver. Claimant was also seen by Dr. Kirsten A. Bracht.
6. Dr. Gulevich, who is board certified in neurology and electrodiagnostic medicine, first saw claimant on June 8, 1994, for numbness and tingling in his hands and feet. He diagnosed peripheral neuropathy possibly related to claimant's work but concluded there was not enough evidence to say it was probably due to lead poisoning. Dr. Gulevich acknowledged the symptoms were not classic symptoms of lead poisoning because claimant had primarily a sensory, rather than motor, neuropathy. But electrodiagnostic studies showed delay of the F-wave and Dr. Gulevich testified the delayed F-wave would be the first abnormality one would see in a motor neuropathy. Claimant's lead level was 23 micrograms per hundred milliliters of blood. Dr. Gulevich testified that most people would not have a problem from that level of lead but also testified that some people are more sensitive than others. While Dr. Gulevich initially concluded there was not enough evidence to establish lead poisoning, he also concluded there was enough evidence that claimant should be treated for blood poisoning and further investigation done. Dr. Gulevich prescribed medication to remove lead from the blood.

Exhibit 11 to Dr. Gulevich's deposition indicates claimant's blood lead levels were 11 on January 26, 1994 (pre-employment), 18 on March 3, 1994 (during employment), 23 on April 26, 1994 (shortly after leaving employment), and then dropped to 11 and 9 on July 21, 1994, and finally 8 on September 28, 1994.

Dr. Gulevich was informed of the various blood levels and was also informed that claimant's symptoms subsided as the blood levels dropped. Based on his examination and

evaluation and based on the additional fact that the blood levels and symptoms corresponded in time, Dr. Gulevich concluded more probably than not claimant's condition was caused by the exposure to lead at work. He testified it would not be inconsistent with lead poisoning at work for claimant's neuropathy in his feet to start after he ceased working for respondent.

Dr. Gulevich acknowledged claimant was the only patient he had seen develop symptoms at a blood level as low as 23.

Dr. Gulevich recommended against work where claimant might be exposed to lead.

7. Dr. Jon F. Richards, board certified internist, saw claimant September 28, 1994. Dr. Richards is a company physician for Exide Battery and General Battery. He reviewed the records, took a history, and performed a physical examination. He found sensory neuropathy which was resolving at the time of the examination but no significant motor neuropathy. He also found none of the classic symptoms of lead poisoning such as gastrointestinal problems, lethargy, or irritability. He testified that sensory neuropathy is not generally associated with lead poisoning. He stated that he would not be concerned with a blood level less than 100. In summary, he found no symptoms or signs of lead toxicity during his examination. He was not persuaded by the fact the symptoms went away after claimant ceased to be exposed because, according to Dr. Richards, sensory neuropathy can, in general, be transitory.

8. Dr. Eugene R. Shippen reviewed claimant's medical records and the depositions of Drs. Gulevich and Richards. He found no evidence of lead neuropathy and testified that he would not generally see functional changes at blood levels below 100. He also noted that, from the records, it appeared claimant's symptoms were worsening in August, well after the blood levels were back down.

### **Conclusions of Law**

1. Claimant has the burden of proving his/her right to an award of compensation and of proving the various conditions on which that right depends. K.S.A. 44-501(a).

2. To be compensable, the injury or disease must arise out of claimant's employment with respondent.

3. The Board finds claimant has failed to prove that the symptoms he experienced, including numbness and tingling in his hands and feet, arose out of his employment or that he suffered from lead poisoning as a result of exposure in his work for respondent. The Board reaches these conclusions based on the testimony of Drs. Richards and Shippen. And while Dr. Gulevich ultimately reaches a contrary conclusion, his conclusion is not well supported by the symptoms and findings. In fact, he has never seen anyone with a lead poisoning neuropathy with a blood lead level of only 23. He acknowledges the symptoms do not fit the diagnosis well. Only the temporal relationship between the symptoms and the exposure appear to support the conclusion. Given the other factors, the Board does not consider the opinion of Dr. Gulevich to be persuasive.

Claimant has argued that the ALJ misinterpreted the medical evidence because he seems to rely on the fact the symptoms worsened after the claimant left work for respondent. The Board agrees that the evidence indicates this could happen from lead poisoning. The symptoms could continue, even become worse, for a period after the exposure and then eventually lessen as they did here. The Board is, however, persuaded by the evidence that the symptoms do not fit the pattern of lead poisoning and that the blood levels were not high enough to cause a problem.

4. The Board also agrees with and affirms the finding by the ALJ that even if it were established that claimant suffered lead poisoning in his work, the claimant has not shown a permanent disability. The symptoms have stopped. It appears that if he had lead poisoning it was due to a hypersensitivity on his part that was not caused by his exposure at work for respondent and that he has now returned to the same status as before he worked for respondent.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Bruce E. Moore on June 23, 1999, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 1999.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: John M. Ostrowski, Topeka, KS  
John W. Mize, Salina, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director